

January 20, 2012

080829.0102

The Honorable John Gleeson  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

W. Zachary Hughes  
TEL +1 212.408.2504  
FAX +1 212.259.2504  
zach.hughes@bakerbotts.com

Re: Case # 1:11-cv-3656; *Thomas v. Mortgage Electronic Registration Systems, Inc., et al*; in the United States District Court for the Eastern District of New York

Dear Judge Gleeson:

Pursuant to this Court's Motion Practices Rule 2.A., Defendants Dolan Media Company, American Processing Company, NDeX, and NDeX West LLC (collectively, "Dolan Media") submit this pre-motion conference request.<sup>1</sup> Dolan Media intends to file motions to dismiss the above-reference complaint under Federal Rules of Civil Procedure ("FRCP") 12(b)(1), 12(b)(3), and 12(b)(6).

### **Procedural Background**

For the third time and in the third jurisdiction, Plaintiff Elizabeth Thomas has brought suit against Dolan Media and a host of other defendants alleging claims of illegal practices in the home foreclosure industry. Thomas' first two attempts to assert these claims were dismissed, and Thomas' latest complaint should reach a similar fate.

In January 2011, Thomas filed a lawsuit in the Southern District of Texas,<sup>2</sup> which was Thomas' then-current place of residence and the location of her home that had been subject to foreclosure. Thomas' complaint was styled as a putative class action, and it asserted the same basic claims against the same basic group of defendants as are present in this case. NDeX West LLC filed a Motion to Dismiss on various grounds. Several days after NDeX West LLC filed its motion, Thomas moved to voluntarily dismiss her case. On April 28, 2011, the district court granted Thomas' motion, dismissing Thomas' case without prejudice. (*See* Exhibit A.)

In February 2011, while her case in the Southern District of Texas was still pending, Thomas filed an adversary proceeding containing similar allegations in her Chapter 7 bankruptcy proceedings in the United States Bankruptcy Court for the Southern District of

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<sup>1</sup> As indicated in Magistrate Levy's January 11, 2012 Minute Entry, Plaintiff is currently proceeding *pro se*. But at the initial conference she expressed her intent to obtain legal counsel. To date, no counsel has made an appearance on behalf of the Plaintiff. Nonetheless, Magistrate Levy advised the Defendants that the Court's pre-motion conference request procedure should be followed given Plaintiff's stated intent to obtain legal counsel.

<sup>2</sup> *Elizabeth Thomas v. Merscorp Inc., et al.*, Case No. 10-4320, in the United States District Court for the Southern District of Texas.

Texas.<sup>3</sup> Dolan Media moved to dismiss the adversary proceeding, which the Bankruptcy Court did on April 28, 2011. The Bankruptcy Court found that it lacked subject matter jurisdiction because the adversary proceeding did not arise under or relate to the Chapter 7 case (which was closed), nor did it arise under the Bankruptcy Code. (*See* Exhibit B.) Thomas initially moved to reopen her Chapter 7 case in an attempt to revive the adversary proceeding, but she later withdrew her motion on the eve of a hearing on the matter. (*See* Exhibit C.)

In July 2011, Thomas filed her third lawsuit against most of the same defendants alleging most of the same allegations, but this time changed the venue to the Eastern District of New York (the “Complaint”). The Complaint contains more than 500 paragraphs, covering more than 100 pages, and includes sixteen causes of action. Once again, Thomas generally condemns the mortgage and foreclose process and claims that Dolan Media assisted in providing faulty documentation for mortgages.

### **Dolan Media’s Motion to Dismiss the Complaint**

Thomas’ case must be dismissed for multiple reasons. First, the Complaint fails under FRCP 8 and the U.S. Supreme Court precedent interpreting Rule 8’s pleading requirements. Despite its length, the Complaint lacks the requisite factual content beyond mere legal conclusions to “nudge [her] claims ... across the line from conceivable to plausible.” *See Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 1952 (2009). As such, the Complaint fails to state a claim upon which relief can be granted, and must be dismissed under FRCP 12(b)(6). Moreover, the Complaint contains several claims that must be dismissed because they are not recognized private causes of action.<sup>4</sup>

Second, Thomas has no standing to bring any of her asserted causes of action because the Complaint identifies no “injury in fact” to her as a result of the defendants’ alleged conduct. At the January 10, 2012 initial conference, Thomas confirmed: “This litigation is not about my home. This – I’m not coming to the Court, asking the Court to make any decisions of whether they take that house or not. It’s not relevant to me any longer at this point...” (Exhibit D at 6:10-14.) Instead, her Complaint focuses on policing the conduct of the defendants and correcting what she perceives as improper foreclosure procedures.<sup>5</sup> But “the ‘injury in fact’ test

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<sup>3</sup> *In re Elizabeth Thomas*, Case No. 10-40785-H3-7, in the United States Bankruptcy Court for the Southern District of Texas; *Thomas v. Dolan Media, et al.*, Adversary No. 11-03090.

<sup>4</sup> The alleged counts in the Complaint for which there is no recognized private cause of action include: (a) The false “Transfer” of Rights in the Property (Count 2); (b) Filing Fraudulent and Illegal Liens (Count 3); (c) Contempt of the Bankruptcy Code (Count 8); (d) Contempt of Federal Rules of Bankruptcy Procedure (Count 9); (e) Unauthorized Practice of Law (Count 10); (f) Abuse of the Bankruptcy Process (Count 11); (g) Fraud on the Court (Count 12); (h) Conspiracy to Commit Wrongful Foreclosure by the Creation, Operation, and Use of the MERS System and fraudulent documents (Count 13); (i) Money Laundering (Count 14); and (j) Violating Due Process and Civil Rights with Threats (Count 15).

<sup>5</sup> “Whether a loan is in default or not is not the issue. It’s whether or not a lawyer can go and make his own documents and use his – and allow someone to use his license to make these documents....So, I mean there’s a lot of allegations here in my complaint – but the most important one focuses on they went to the United States Patent and Trademark Commission and to a copyright and they made up their own procedures for foreclosure.” (Ex. D at 7:24 – 8:2; 11:20 – 12:1.)

requires more than an injury to a cognizable interest. It requires that the party seeking review be himself among the injured.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 112 S.Ct. 2130, 2137 (1992). The Complaint identifies no such injury to Thomas.<sup>6</sup>

Third, even if Thomas amended the Complaint to allege an injury based on the foreclosure of her Texas home, the Complaint would still have to be dismissed under FRCP 12(b)(1) because this Court would lack subject matter jurisdiction over such a dispute. Thomas would, in effect, be asking this Court to review the actions of the Texas state court foreclosure proceedings, which is prohibited under the *Rooker-Feldman* doctrine.

Fourth, the Complaint should be dismissed under the doctrine of judicial estoppel. Thomas filed for bankruptcy in December 2010. However, Thomas failed to disclose any of the alleged causes of action or potential claims to damages in her bankruptcy proceedings. Because the bankruptcy court relied on Thomas’ failure to disclose these alleged assets when the court granted her a discharge in March 2011, Thomas is judicially estopped from pursuing the claims now. *See Ibok v. Siac-Sector Inc.*, No. 05-Civ-6584, 2011 WL 293757 (S.D.N.Y. Feb 2, 2011).

Finally, the Complaint must be dismissed under FRCP 12(b)(3) because the Eastern District of New York is an improper venue. The Complaint contains a single conclusory statement with no factual support that “Venue is proper in this District pursuant 28 U.S.C. §1391.” (sic) (*See* Complaint ¶82.) Because all of the defendants do not reside in the same State, §1391(b)(2) requires that venue be in “a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated.” Thus, to the extent this case is viable in any venue, it should be brought in the district in which Thomas’ home is situated and where the foreclosure took place (i.e., the Southern District of Texas). This case bears absolutely no relationship to the Eastern District of New York, and should be dismissed accordingly.

Simply stated, Thomas has now filed essentially the same groundless lawsuit for the third time. And, upon review of Dolan Media’s motions, this third lawsuit should end just as the first two have previously – dismissal of the Complaint.

Very truly yours,

  
W. Zachary Hughes

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<sup>6</sup> Although unclear from the Complaint, Thomas has previously indicated that she is bringing claims on behalf of others as a class action. *See, e.g.*, Complaint ¶497 (“The plaintiff and the class invoke the court’s inherent powers...”). However, as a non-lawyer, Thomas is prohibited from representing the rights of others in a class action. Therefore, to the extent the Complaint seeks damages on behalf of anyone other than Thomas, the Court should dismiss the Complaint based on Thomas’s inappropriate attempt to represent a class of injured plaintiffs.

cc: Elizabeth Thomas (*pro se* Plaintiff)  
Jeff Stark, Counsel for Defendant Barrett Daffin

# Exhibit A

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

Elizabeth Thomas,

Plaintiffs,

v.

Merscorp, Inc., et al,

Defendant.

§  
§  
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§  
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§  
§  
§


Civil No. H-10-4320

ORDER

Pursuant to the Notice of Voluntary Dismissal filed on April 28, 2011, the above-styled action shall be and is hereby dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(1)(A)(ii).

The Clerk shall send a true copy to all counsel of record.

Signed this 28 day of April, 2011.



DAVID HITTNER  
United States District Judge

# Exhibit B



ENTERED  
04/29/2011

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

IN RE

ELIZABETH THOMAS,

Debtor,

ELIZABETH THOMAS,

Plaintiff,

v.

DOLAN MEDIA COMPANY, ET AL.

Defendants.

CASE NO. 10-40785-H3-7

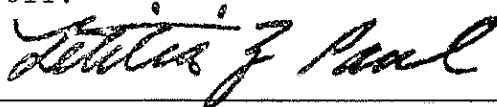
ADV. NO. 11-3090

ORDER

The court has sua sponte considered its subject matter jurisdiction. The main bankruptcy case is closed. The instant adversary proceeding does not arise in the Chapter 7 case, does not arise under the Bankruptcy Code, and is not related to the Chapter 7 case. Thus, this court lacks subject matter jurisdiction under 28 U.S.C. § 1334. Accordingly, it is

ORDERED that the above captioned adversary proceeding is dismissed.

Signed at Houston, Texas on this APR 28 2011  
day of \_\_\_\_\_, 2011.

  
LETITIA Z. PAUL  
UNITED STATES BANKRUPTCY JUDGE



# Exhibit C



ENTERED  
07/05/2011

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

IN RE

ELIZABETH THOMAS,  
Debtor,

)  
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)  
)  
)  
)  
)

CASE NO. 10-40785-H3-7

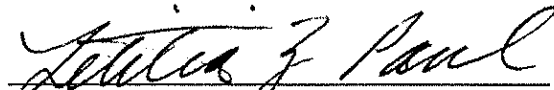
ORDER

On the "Emergency Motion to Withdraw for Safety  
Concerns" (Docket No. 81), the following motions are withdrawn:

1. Application to Pay Filing Fee in Installments  
(Docket No. 55).
2. Motion to Reopen Bankruptcy Case (Docket No. 61).
3. Emergency Motion to Transfer Venue (Docket No.  
68).
4. Emergency Motion to Transfer Venue (Docket No.  
73).

SO ORDERED.

Signed at Houston, Texas on July 5, 2011.

  
LETITIA Z. PAUL  
UNITED STATES BANKRUPTCY JUDGE

# Exhibit D

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X **Docket#**  
ELIZABETH THOMAS, : 11-cv-3656 (JG) (RML)  
Plaintiff, :  
 :  
- versus - : U.S. Courthouse  
 : Brooklyn, New York  
MORTGAGE ELECTONIC :  
REGISTRATION SYSTEMS, INC., :  
et al, : January 10, 2012  
Defendant :  
-----X

TRANSCRIPT OF CIVIL CAUSE FOR CONFERENCE  
BEFORE THE HONORABLE ROBERT M. LEVY  
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S:

For the Plaintiff: Elizabeth Thomas, Esq.  
41 Schermerhorn Street  
#881  
Brooklyn, NY 11201

For the Defendant: William Zachary Hughes, Esq.  
Baker Botts LLP  
30 Rockefeller Plaza  
New York, NY 10112  
  
Jeffrey Stark, Esq.  
Forchelli Law Group  
333 Earle Ovington Blvd.  
Suite 1010  
Uniondale, New York 11553

Transcription Service: Transcriptions Plus II, Inc.  
3589 Tiana Street  
Seaford, N.Y. 11783  
Transcriptions2@verizon.net

Proceedings recorded by electronic sound-recording,  
transcript produced by transcription service

1 THE COURT: This is docket number 11-cv-3656,  
2 Thomas v. Mortgage Electronic Registration Systems, Inc.

3 Will counsel please -- Ms. Thomas, are you on  
4 the line?

5 MS. THOMAS: Yes. Yes, I am.

6 THE COURT: Are you representing yourself in  
7 this case?

8 MS. THOMAS: Yes, I am.

9 THE COURT: All right. And who else is on the  
10 line?

11 MR. STARK: Jeff Stark of the Forchelli Curto  
12 firm on behalf of the Barrett Daffin law firm.

13 THE COURT: Okay.

14 Ms. Thomas, can you just start by explaining a  
15 little bit what your case is about?

16 MS. THOMAS: Well, my case is documentation. I  
17 am alleging that Barrett Daffin & Frappier is -- was  
18 attempting to try to foreclose on my home by using  
19 fraudulent documents, by using documents that they  
20 created themselves; notices of default, notices of  
21 assignments and all these documents are not part of my  
22 mortgage file that they're, in fact, documents that they  
23 made themselves as part of an art and science invention,  
24 patent and copyrights that they have.

25 I'm alleging that they have created a network

1 where they have their own practices of collecting debt,  
 2 Barrett Daffin & Frappier law firm is a debt collector.  
 3 I'm alleging that through Dolan Media, using its  
 4 subsidiary and trade name, NDEX, they have orchestrated a  
 5 scheme to send out these notices where they make -- where  
 6 they led me to believe that they were from a attorney,  
 7 that an attorney was involved with my debt. That there  
 8 was a procedure involved that an attorney had -- was  
 9 going to take a legal action against me.

10           When I started investigation where these  
 11 notices come from, I find out that these notices actually  
 12 come from Dolan Company because Barrett Daffin & Frappier  
 13 and other lawyers, certain other lawyers, have entered  
 14 into an agreement with Dolan Company. Barrett Daffin &  
 15 Frappier sold Dolan Company, National Default Exchange,  
 16 which is an art and science procedure; it is an invention  
 17 of starting foreclosure and creating documents for a  
 18 foreclosure. Barrett Daffin & Frappier in 2008 sold that  
 19 procedure to Dolan Company for \$167 million under the  
 20 agreement that for twenty-five years, Barrett Daffin &  
 21 Frappier would refer notices, referrals to Dolan Company,  
 22 for them to start the foreclosure process.

23           And under those agreements, whenever a bank  
 24 servicer sends Barrett Daffin a referral that someone is  
 25 in default, Barrett Daffin and Frappier has agreed to

1 immediately send that referral to Dolan to start the  
2 foreclosure process. That's a little bit about my claim.

3 THE COURT: Okay. What does Barrett Daffin say  
4 to that?

5 MR. STARK: Well, first of all, we say that  
6 we're not in New York and we're going to be making a  
7 12(b)(2) motion in a time directed by the Court to  
8 dismiss the lack of jurisdiction.

9 But I can give some background to Ms. Thomas'  
10 situation. She had a mortgage with Chase Home Finance  
11 which went into default. Under Texas law, there's a  
12 procedure for the non-judicial foreclosure of a defaulted  
13 mortgage under a power of sale which is granted in a deed  
14 of trust and in Ms. Thomas' case, her deed of trust did  
15 contain such a power of sale.

16 The procedure under Texas law for accomplishing  
17 a non-judicial foreclosure includes: sending a notice,  
18 accelerating the debt, which happened here. Notifying  
19 the -- Ms. Thomas of the date and scheduled time of the  
20 sale which happened in this case and was scheduled to  
21 occur on December 7, 2010. Arranging for the notice of  
22 sale to be posted and filed at the courthouse, which was  
23 done here. Prepared and recorded an appointment of a  
24 substitute trustee, that issue is the focus of many of  
25 the allegations in Ms. Thomas' complaint. That is, the

1 power of the law firm to cause a substituted trustee to  
2 be appointed. But under Texas law, the substitution of  
3 trustees are permitted and typical and the deed of trust  
4 in Ms. Thomas' case, specifically authorizes the removal  
5 and appointment of substitute trustees which happened  
6 here.

7 MS. THOMAS: Your Honor, I object because that  
8 is not the substance of my complaint.

9 THE COURT: Right. Well, hold on just a minute  
10 and let him finish and then you can have an opportunity  
11 to explain why he's wrong.

12 MS. THOMAS: Okay. I'm sorry.

13 THE COURT: Sure.

14 MR. STARK: But in terms of the relationship of  
15 the Barrett firm to the Dolan defendants, we're not the  
16 same. We, the law firm, contracts with the Dolan Company  
17 on a per file or per service basis to provide various  
18 administrative functions in connection with foreclosures  
19 and we've done that here.

20 The intellectual property that is the focus of  
21 some of Ms. Thomas' allegations are not owned by the  
22 Barrett law firm. So -- and we previously had  
23 litigations with Ms. Thomas in Texas which -- in the  
24 bankruptcy court. By the way, the sale of her property  
25 has, in fact, not taken place in part because of a



1 bankruptcy filing.

2           Ms. Thomas voluntarily discontinued that  
3 litigation in Texas and then instituted this litigation  
4 in New York. But as we expect to show in our motion  
5 papers, the Barrett law firm does no business in New York  
6 and is not subject to the jurisdiction of the New York  
7 court.

8           THE COURT: Ms. Thomas, you wanted to clarify  
9 something and then I'll hear from --

10           MS. THOMAS: Yes, your Honor. This litigation  
11 is not about my home. This -- I'm not coming to the  
12 Court, asking the Court to make any decision of whether  
13 they take that house or not. It's not relevant to me any  
14 longer at this point because no matter where I am -- and  
15 the case in New York was not voluntarily dismissed. I  
16 had to dismiss it because the Barrett Daffin firm  
17 threatened me. I can't even stay in Texas because the  
18 Barrett Daffin & Frappier law firm threatened me.

19           So, because of -- I fear for my safety, I came  
20 home. I was born and raised in New York. So I came back  
21 home to my family. Barrett Daffin & Frappier continue to  
22 send me mail in New York about my situation. They  
23 surrendered themselves to this jurisdiction.

24           Secondly, Barrett Daffin & Frappier are  
25 shareholders of Dolan Company. They filed as -- and

1 they're sellers for Dolan. They are connected as one.  
 2 They file one Securities and Exchange Commission filing  
 3 for their profit and their shareholders. So they are  
 4 connected to the Dolan Company in every sense of the  
 5 word.

6 But, your Honor, my complaint is that no matter  
 7 what situation that I am in, whether default, not  
 8 default, I am not bringing that issue before the Court  
 9 because no matter what happens, it doesn't mean that a  
 10 lawyer should go make -- a lawyer can't make his own  
 11 evidence. I don't know. I've been talking to the  
 12 Attorney General in Nevada. And as you know, I'm pro se.  
 13 I don't know the law. I'm depending on the Court for the  
 14 law. All I know is that in that situation in helping  
 15 with that investigation there, they say that a lawyer  
 16 cannot go out and make his own documents. He cannot go  
 17 out and -- and the intellectual property that counsel was  
 18 alleging that Barrett Daffin & Frappier is not connected  
 19 to is not true. They're shareholders of that property.  
 20 And that intellectual property, your Honor, is a  
 21 procedure where the law firm has created a statewide  
 22 organization of lawyers that have entered into an  
 23 agreement with Dolan Company to use this procedure to  
 24 foreclose. Whether a loan is in default or not is not  
 25 the issue. It's whether or not a lawyer can go and make

1 his own documents and use his -- and allow someone to use  
2 his license to make these documents.

3           As the Court will discover, Dolan doesn't know  
4 anything about my loan. Dolan doesn't know anything  
5 about the status of my loan. How can Dolan Company put  
6 me in default? How can Dolan Company put -- send notices  
7 out to me? I made agreements to do these things with my  
8 lender; yes. I did. I made agreements to make a -- if  
9 anything happened, my lender could do -- take certain  
10 actions against me. It doesn't mean that a lawyer can  
11 enter into agreements to allow someone to use their law  
12 number and their signature to send out these notices and  
13 when all -- nothing in the notices are true; nothing.  
14 Nothing is true in it.

15           So that's my allegation but another thing, I  
16 mean I don't want to get into legal terms about my case  
17 as far as jurisdiction and those things because I'm not  
18 experienced. Had I been able to make my flight  
19 yesterday, today I would have had counsel here. I would  
20 have had a lawyer here representing me on the case. I  
21 just needed to get -- I came here to get all my documents  
22 that is voluminous.

23           And unfortunately, my flight yesterday, I just  
24 couldn't make it. They canceled one. They canceled the  
25 second and it got too hectic to even try to get onto

1 another.

2 But I do have an attorney I'm meeting with  
3 tomorrow who will be making an appearance in this case to  
4 argue jurisdiction, to argue those legal matters that are  
5 far beyond my knowledge.

6 THE COURT: When you say created documents,  
7 what do you mean by that?

8 MS. THOMAS: Well, your Honor, when I filed  
9 this complaint, I also attached to it a patent and in  
10 that patent, and I mean some of the stuff I did not -- I  
11 did not produce to the Court because to be honest, I'm  
12 afraid. I mean, I don't want people seeing this stuff  
13 and calling me and asking me about it but there is a  
14 patent and in that patent, Barrett Daffin & Frappier had  
15 -- is an assignee for an invention. When I called the  
16 United States Trademark, the United States Patent and  
17 Trademark Association, I asked them what is a patent?  
18 They told me a patent is just an idea. It's an idea made  
19 real.

20 So, Barrett Daffin & Frappier took this idea  
21 from an invention and they created their own method of  
22 foreclosure. For example, you see that in an electronic  
23 way, in a paperless fashion, Barrett Daffin & Frappier,  
24 Dolan Company is a wireless electronic office for  
25 lawyers. They become their back office; wireless when

1 they get these referrals.

2 But more importantly is that it shows a  
3 documented procedure for starting foreclosure. As a  
4 matter of fact, if I submit it and I hope to with the  
5 assistance of the Attorney General in Nevada, if I submit  
6 this, the grand jury minutes of the notaries that pled  
7 guilty and testified there, you'll see that these  
8 notaries talked about how these -- they're just notaries.  
9 They just sit down at a computer and search for the  
10 beneficiary on people's mortgages that a servicer is  
11 alleging is in default. Once they see who the current  
12 beneficiary is, then they do an assignment. On every  
13 foreclosure there's always an assignment to someone else.

14 And I'm saying that if there is an assignment,  
15 it can't be done by a procedure. Most of these notaries  
16 don't know nothing. They don't know about loans. They  
17 don't know nothing about the mortgage business. They  
18 don't know anything. They're just following at patent.  
19 That patent is in -- I submitted to the Court as my  
20 evidence. That patent shows documented that how they  
21 create their own documents necessary for foreclosure.

22 For example, if I submit to the Court my --  
23 what a lawyer is saying is my loan file versus the  
24 document Barrett Daffin & Frappier used, you'll see that  
25 those documents don't look anything alike. Where did

1 Barrett Daffin & Frappier and them get those documents  
2 from? I don't know but my loan file, according to  
3 another lawyer, came with assignments. And an assignment  
4 was to a different bank than Barrett Daffin & Frappier  
5 assigned my loan to.

6           How does Barrett Daffin & Frappier know who I  
7 owe money to? How do they know? There's people more --  
8 there's experts that's trying to figure out who owns  
9 these loans. Well, that's not an excuse for anyone not  
10 to pay but I have experts that's really -- I will have  
11 experts lined up that's willing to come to the Court to  
12 testify about the importance of certificate holders, how  
13 they're not getting their money. How they would like to  
14 set up a fund where people who are not paying can pay  
15 these lawyers that their money could go to certificate  
16 holders, where it belongs to, instead of a bank servicer.  
17 Chase has gotten paid so many -- how many times have I  
18 got to pay Chase?

19           THE COURT: Uh-huh.

20           MS. THOMAS: So, I mean there's a lot of  
21 allegations here in my complaint --

22           THE COURT: Okay.

23           MS. THOMAS: -- but the most important one  
24 focuses on they went to the United States Patent and  
25 Trademark Commission and to a copyright and they made up

1 their own procedures for foreclosure. They hired people.  
 2 They used temporary agency and hired people who don't  
 3 know anything, anything about people mortgages and these  
 4 people stayed in an office around the clock, just  
 5 assigning people mortgages. There's four notaries.

6 THE COURT: Okay. I think I understand your  
 7 claim and I have Mr. Hughes -- Mr. Hughes?

8 MR. HUGHES: Yes, your Honor.

9 THE COURT: -- has been waiting here patiently.  
 10 I'm just going to give him an opportunity to speak as  
 11 well.

12 MR. HUGHES: Okay. And I don't have, frankly,  
 13 a whole lot to add substantively. My client, I represent  
 14 a couple of the defendants here or several of the  
 15 defendants here, Dolan Media being the parent company.

16 Dolan's business is -- has a variety of aspects  
 17 to it. The one aspect of it is this kind of foreclosure  
 18 services, where their clients are law firms such as the  
 19 one involved here, who really use Dolan and the software  
 20 that it has acquired in order to meet the foreclosure  
 21 requirements in a variety of states. Notably New York is  
 22 actually not one of them but Texas certainly is which is  
 23 where this dispute, I guess, arose from.

24 Again, substantively I don't really have much  
 25 to add here. Just procedurally again to kind of pick up

1 where Mr. Stark had alluded to, Ms. Thomas did originally  
2 file her case in the Southern District of Texas. There  
3 were actually two different lawsuits. One was filed in  
4 the Bankruptcy Court in the Southern District of Texas  
5 related to the bankruptcy action that she had started in  
6 that forum. That case was dismissed because her  
7 bankruptcy case had already been closed.

8           The second case was then just filed in the  
9 District Court in the Southern District of Texas. We got  
10 -- we received a complaint, very similar to the one we  
11 have here, obviously a very lengthy one with some of the  
12 allegations that Ms. Thomas has outlined. Our position  
13 was that that complaint had not stated a claim that was  
14 actionable and we filed a 12(b)(6) motion. Before that  
15 motion could be heard, Ms. Thomas dismissed the suit.

16           We thought that was the end of the matter and  
17 then several months later, the case got refiled here in  
18 the Eastern District of Texas -- Eastern District of New  
19 York, excuse me. I'm operating from a bit of a handicap  
20 myself because I myself just moved here from Houston. So  
21 that makes two of us, Ms. Thomas and myself and this  
22 lawsuit -- I guess that makes three of us that have moved  
23 from Houston to New York.

24           In any event, so I think where we find  
25 ourselves now and I've had several conversations with Ms.



1 Thomas. I think they've all been very collegial in  
2 trying to move the ball forward. Where I see -- how I  
3 see the case positioned at this point is we just need to  
4 determine whether the complaint that's on file is the  
5 complaint she's going forward with.

6 In several of our discussions she's alluded to  
7 doing one of two things, neither of which are mutually  
8 exclusive which is hiring counsel to assist her here  
9 and/or amending her complaint.

10 And it's just been our position that we need to  
11 kind of figure out what the allegations are, figure out  
12 if she is going to hire counsel to assist her or not and  
13 then whatever decision she makes on that we're ready to  
14 proceed accordingly, but at least as the complaint stands  
15 now, quite frankly, we're going to file a very similar  
16 motion to what we filed in the Southern District of  
17 Texas.

18 We're trying to determine, frankly, whether we  
19 have similar jurisdictional arguments that Mr. Stark  
20 alluded to for his clients. But in any event, it would  
21 at least be a 12(b)(6) motion as things currently stand.

22 THE COURT: And who is MERS Corp.?

23 MR. HUGHES: That is a question that I'll have  
24 to defer to Ms. Thomas because they are not affiliated  
25 with Dolan Media Company and --

1 MS. THOMAS: MERS Corp. is a shareholder, is  
2 the owner of MERS Electronic Registration System.

3 THE COURT: Okay. Now I recall about a month  
4 or two ago, Ms. Thomas, you were looking for a change of  
5 venue, but you no longer want to do that; correct? You  
6 want to stay here in Brooklyn?

7 MS. THOMAS: Your Honor, I mean right now I  
8 think that's the best thing. I've talked to several  
9 experts and we're still trying to discern whether -- I  
10 don't see the difference. Well, I'm from New York, so  
11 for me, I don't see the difference between Brooklyn and  
12 New York but I guess from someone from the outside  
13 traveling in accommodations, it may be different. And,  
14 you know, at the same time which I guess that all depends  
15 on whether I survive a motion to dismiss.

16 THE COURT: Okay. Mr. Stark, are you looking  
17 for a motion to dismiss and Mr. Hughes, you're both  
18 looking to move to dismiss at this point?

19 MR. STARK: Well, I leave it in part to Ms.  
20 Thomas and the Court. That is to say, I would be  
21 surprised if a new -- if a lawyer came in and wanted to  
22 amend the complaint, I don't think that would affect the  
23 question of whether the Court had jurisdiction over my  
24 client.

25 MS. THOMAS: Right.

1 MR. STARK: It might be that a lawyer who took  
2 a close look at this would advise Ms. Thomas that there  
3 was no jurisdiction in New York and save us a motion.  
4 But --

5 MS. THOMAS: (Indiscernible).

6 MR. STARK: -- I can go either way. I could  
7 either wait for Ms. Thomas to have a lawyer come in and  
8 either talk -- and have a chat with that lawyer to see  
9 whether the motion was required or, you know, we're  
10 prepared to make a motion in a couple of weeks if the  
11 Court wants us to.

12 MR. HUGHES: And I would say our position is  
13 very similar. I mean, we're prepared to move forward  
14 today and file our motion within the next two or three  
15 weeks or if Ms. --

16 MS. THOMAS: (Indiscernible).

17 MR. HUGHES: -- Thomas wants more time or the  
18 Court deems that appropriate for her to better evaluate  
19 her case in the context of perhaps trying to find an  
20 attorney, we're happy to give that time, as well.

21 THE COURT: Okay.

22 MS. THOMAS: No, your Honor. I don't need it.  
23 I think you know, getting them to answer the complaint  
24 would be great. I mean they've had it since October.  
25 They're going to move to dismiss. I'm getting an

1 attorney, whether they feel I have jurisdiction or not, I  
2 don't think it's going to matter. I've spoken to an  
3 attorney and we don't see a jurisdiction issue. So, they  
4 can just go ahead with their motion to dismiss.

5 THE COURT: Well, Mr. Hughes, you're not moving  
6 to dismiss on jurisdictional grounds, are you?

7 MR. HUGHES: I don't believe so. We're  
8 evaluating that but I think candidly, we probably don't  
9 have the same personal jurisdiction argument that  
10 Mr. Stark does for his clients. But we may also be  
11 looking at a venue issue. So, you know, there are a  
12 couple of things we're looking at but primarily, it would  
13 be a 12(b)(6) motion.

14 THE COURT: Okay. So, Ms. Thomas, you're  
15 saying that at this point you will not be getting an  
16 attorney until the motions are filed and then at that  
17 point, you'd be evaluating?

18 MS. THOMAS: No, your Honor, that's not what  
19 I'm saying.

20 THE COURT: Okay.

21 MS. THOMAS: One of the things I spoke with the  
22 lawyer and the RICO expert is -- was about jurisdiction  
23 and whether or not these defendants, whether there would  
24 be a jurisdiction issue. I mean, as an American citizen,  
25 I have to be able to go to court somewhere, your Honor.

1 You know, I mean if I am not doing anything disrespectful  
 2 before the Court or disrespectful to my defendants, I  
 3 certainly as far as I know, still have a right to bring  
 4 an issue before a judge and let a judge decide it.  
 5 Twice, your Honor, they have prevented and stopped me  
 6 from going to court. If you look at the reasons why  
 7 these issues was dismissed in bankruptcy, you'll see that  
 8 the judge ordered all my motions pending before her,  
 9 withdrawn without prejudice due to safety concerns. My  
 10 case before the southern district court,  
 11 Judge Hitner (ph.), had to be removed, dismissed, due to  
 12 safety concerns. So I mean, if I file a complaint  
 13 (indiscernible) --

14 THE COURT: Whose safety -- I'm sorry, whose  
 15 safety concerns? The concerns of your safety or the  
 16 concerns of others?

17 MS. THOMAS: The safety -- my safety concerns  
 18 and my family. I mean, we're afraid. We're afraid. So,  
 19 I mean if I file a complaint that doesn't disrespect  
 20 anybody in a personal way, I didn't -- even in my  
 21 complaint here, I didn't say anything personal. I mean,  
 22 I tried, if I did, it wasn't intentional. I filed a  
 23 complaint. I have an issue. I would like a judge, not a  
 24 lawyer, I would like a judge to just hear my case and  
 25 decide my issue. I don't think I should have to be

1 afraid. I don't think someone should be calling me on  
2 the phone threatening me, telling me I better consider  
3 sanctions that I can suffer, me and my family can suffer  
4 outside of the ones the Court can give me. What kind of  
5 sanctions me and my family can suffer outside the one a  
6 court could give me for filing a complaint? What?

7           So now I can't go to bankruptcy court in Texas.  
8 Now I can't go to federal court in Texas. Now I have to  
9 be on the run like a thief because I can't stay in my  
10 home because we're afraid. Every little noise, every  
11 little this. What are they going to do, you know?  
12 Because I have this information, because I have this --  
13 so I came home. I was born and raised in New York. I  
14 only moved -- I only lived in Texas four years. I was  
15 born and raised in New York in the Bronx. So I came home  
16 with the remainder of my family. Even there, I don't  
17 feel comfortable because I don't want to bring them any  
18 hardship. So I filed the complaint here because where  
19 else I'm going to go now? Where else I'm going to go  
20 now? So now they're going to argue I don't have  
21 jurisdiction. Now they're going to argue that -- they  
22 send me mail there. They correspond with me in New York.  
23           I'm alleging a statewide RICO claim -- case, at  
24 least one of my defendants are located in New York, which  
25 is Chase Manhattan. I -- and as long as I have one

1 defendant there, I believe that there's a jurisdiction  
2 issue. And even if it's not, that's for the Court to  
3 decide.

4 THE COURT: All right. So, at this point,  
5 everyone seems ready to have this motion decided; is that  
6 correct?

7 MS. THOMAS: Yes. And by tomorrow, your Honor,  
8 I will have counsel. Like Is aid, if I would have made  
9 it to New York yesterday, I would have -- I came -- one  
10 of the reasons why I was here in Texas was getting all my  
11 documents but I couldn't get a flight. They was -- we  
12 was on for Tornado watch yesterday.

13 THE COURT: Okay.

14 MS. THOMAS: They canceled my flight. They  
15 didn't delay it, they canceled it.

16 THE COURT: Right. And who is -- do you know  
17 who your attorney will be?

18 MS. THOMAS: I'm -- Ms. Pipagorro (ph.) . I've  
19 already spoken to both -- to Mr. Hughes and Mr. Stark  
20 about her. So, I just needed to get my documents to her  
21 and go over them with her.

22 THE COURT: Okay.

23 MS. THOMAS: That's what I need and I will be  
24 doing that tomorrow.

25 THE COURT: All right. And then she'll need to

1 file a --

2 MS. THOMAS: (Indiscernible).

3 THE COURT: I'm sorry. She'll need to file a  
4 notice of appearance.

5 MS. THOMAS: Yes, she will.

6 THE COURT: Okay. And when do you think she'll  
7 do that by, by the end of the week?

8 MS. THOMAS: Yes. Yes, your Honor.

9 THE COURT: Okay.

10 MS. THOMAS: But I don't want that to prevent  
11 the defendants to go ahead with their motion to dismiss.

12 THE COURT: Well, I think Judge Gleeson will  
13 probably want to have a premotion conference, if you're  
14 represented.

15 MS. THOMAS: Oh.

16 THE COURT: You know, just to discuss the  
17 issues but again, that's -- we'll wait and see. If your  
18 attorney is going to file a notice of appearance by the  
19 end of the week, then I think counsel should write  
20 premotion conference letters to Judge Gleeson. Just  
21 check his rules and make sure they're required in this  
22 situation but I think they are.

23 MS. THOMAS: Okay.

24 THE COURT: Okay? Mr. Stark, does that sound  
25 right to you?



1 MR. STARK: Yes.

2 THE COURT: Okay. Mr. Hughes?

3 MR. HUGHES: Sure.

4 THE COURT: Okay. So I think that's where  
5 we'll proceed from here. And Ms. Thomas, your lawyer  
6 will file the notice of appearance, both of the  
7 defendant's attorneys will file their premotion  
8 conference letters and then Judge Gleeson will instruct  
9 you all what to do next.

10 MS. THOMAS: Okay.

11 THE COURT: Okay? Now, I would expect -- it  
12 probably makes sense for the premotion conference letters  
13 to come some time next week, if -- I wouldn't file them  
14 -- I don't know when you were planning to file them but I  
15 would not file them before the notice of appearance has  
16 been filed because I believe his rules do not require a  
17 premotion conference where there's a pro se.

18 MR. HUGHES: I believe that's correct.

19 MR. STARK: I think that's correct.

20 THE COURT: Right. So, Mr. Stark, when would  
21 you like to file your premotion conference letter?

22 MR. STARK: Oh, let me say -- why don't we say  
23 next Friday, so that Ms. Thomas' lawyer has a chance to  
24 review the documents and then put in her notice of  
25 appearance.

1 THE COURT: Okay.

2 MR. HUGHES: That's fine. I don't have a  
3 calendar in front of me though. What -- do you have a  
4 date on that, Jeff?

5 MR. STARK: Yes, that's the 20th, I think.

6 THE COURT: 20th. Okay.

7 MR. HUGHES: And I guess my only question would  
8 be in the eventuality we don't get a notice of appearance  
9 this week, then what is our next step?

10 MS. THOMAS: Motion to dismiss.

11 THE COURT: Yes. Are you certain, ma'am, that  
12 you're going to have an attorney?

13 MS. THOMAS: I mean, I am hoping to come to  
14 agreements with her on certain things. I mean, until I  
15 get it written -- I know there's a strong interest there  
16 with her and, you know, but --

17 THE COURT: Okay.

18 MS. THOMAS: -- until we go over all the  
19 documents, your Honor, I don't want to say that I have  
20 one and then something happens and we don't come to an  
21 agreement, you know? This is -- to me, this is a case  
22 about lawyers. I'm going to -- obviously, I'm going to  
23 have to defer to her legal advice and that's something  
24 I'm prepared to do. I'm not a lawyer. I mean, she is.  
25 So legally, whatever she recommends is what I'm willing

1 to abide by.

2 THE COURT: Okay. So for example, if she says  
3 she does not think you have jurisdiction over Mr. Stark's  
4 client, would you follow that view or would you proceed  
5 on your own?

6 MS. THOMAS: I will follow that view but that  
7 was one of the first things that she looked at was the  
8 jurisdiction issue. And that was one of the first things  
9 she put to one of her counsels who only do RICO cases,  
10 what's the jurisdiction issue. So I guess that  
11 jurisdiction issue is going to be a matter for the court.

12 It's the other -- the complicity of it for her,  
13 your Honor, is she's not an intellectual attorney, as far  
14 as patents and copyrights and all those things are  
15 concerned. Those are the things that I really have to  
16 get to her for her to get advice on. So, everything else  
17 is not of issue.

18 THE COURT: Well, Mr. Stark, do you think it  
19 makes sense to file the premotion conference letter  
20 either way next Friday and then if it turns out that  
21 she's pro se, to just go ahead with the briefing  
22 schedule, let Judge Gleeson make the decision or do you  
23 want to hold up?

24 MS. THOMAS: Let's just --

25 THE COURT: Okay, you know, you could just put

1 a note in the first paragraph of your letter saying that  
2 we had this conference today and that Ms. Thomas is  
3 planning on hiring an attorney and then leave it at that.

4 MR. STARK: Yes.

5 THE COURT: You know, just whatever you think  
6 makes sense.

7 MR. STARK: That's good.

8 THE COURT: Okay?

9 MR. STARK: Yes.

10 THE COURT: Anything else?

11 MR. HUGHES: Nothing else from me, your Honor.

12 THE COURT: All right. Ms. Thomas, anything  
13 else?

14 MS. THOMAS: No, your Honor, nothing else for  
15 me.

16 THE COURT: Mr. Stark?

17 MR. STARK: Not a thing.

18 THE COURT: Okay. Thank you very much.

19 MR. STARK: All right. Nice to talk to you  
20 again, Ms. Thomas.

21 MS. THOMAS: Thank you. Thank you.

22 MR. HUGHES: All right. Thank you.

23 THE COURT: Bye.

24 (Matter concluded)

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## C E R T I F I C A T E

I, LINDA FERRARA, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this 18th day of January, 2012.



Linda Ferrara

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